

§ 143.10

of conversion specifying the location of the home office and any branch offices to be maintained by the Federal savings association, and providing for:

(1) Appropriate reserves and surplus for the Federal savings association;

(2) Satisfaction in full or assumption by the Federal savings association of all creditor obligations of the applicant;

(3) Issuance by the Federal savings association of savings accounts to current holders of withdrawable accounts in an amount equaling the value of such accounts; and

(4) If applicable, issuance of additional savings accounts to current holders of nonwithdrawable capital stock of the applicant in an amount equaling the value of their nonwithdrawable capital stock, including the present value of any preference to which such holders are entitled.

(c) *Action on application.* The OCC will consider such application and any information submitted with the application, and may approve the application in accordance with section 5(e) of the Home Owners' Loan Act and §143.2(g)(1). Converting depository institutions that have been in existence less than three years will be subject to all approval criteria and other requirements applicable to *de novo* Federal associations. Approval of an application and issuance by the OCC of a charter will be subject to:

(1) Compliance by the applicant with all conditions prescribed in the approval;

(2) Receipt by the applicant of approval of the plan of conversion by such vote as may be required by the laws of the applicant's jurisdiction to consider such action;

(3) In the case of a converting association the accounts of which are not insured by the Federal Deposit Insurance Corporation, receipt by the OCC of written confirmation from the Federal Deposit Insurance Corporation that the accounts of the converting association will be insured by the Federal Deposit Insurance Corporation; and

(4) Receipt by the OCC of written confirmation from the appropriate Federal Home Loan Bank of approval of the converting institution's application for Federal Home Loan Bank

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membership, if the institution is not a member.

§ 143.10 Organization after conversion.

Except as provided in §143.11, after a Federal charter is issued under §143.9 the association's members shall, after due notice, or upon a valid adjournment of a previous legal meeting, hold a meeting to elect directors and take all other action necessary fully to effect the conversion and operate the association in accordance with law and these rules and regulations. Immediately thereafter the board of directors shall meet, elect officers, and transact any other appropriate business.

§ 143.11 Organization plan for governance during first years after issuance of Federal mutual savings bank charter.

(a) *Organizational meeting.* Except as provided in paragraph (c)(1) of this section, promptly upon receipt of a charter, the officers of a Federal mutual savings bank which, immediately prior to conversion, was a state chartered mutual savings bank, shall call a meeting of the members. Notice for, and conduct of, such meeting shall be in accordance with the bank's Federal charter and bylaws. Business to be conducted at the organizational meeting shall include the election of trustees (who may also be known as a board of directors) and any other matters permitted by the charter and bylaws. Any action taken at such meeting shall be deemed an acceptance of the charter and bylaws approved by the OTS prior to July 21, 2011 or by the OCC pursuant to §144.1 of this chapter.

(b) *First meeting of trustees.* Upon election or appointment, the board of trustees shall hold a meeting to elect the officers of the bank in accordance with its Federal charter and bylaws, and to take other action necessary to permit the operation of the bank in accordance with the Home Owners' Loan Act of 1933, as amended, the bank's charter and bylaws, these rules and regulations, and orders of the OCC.

(c) *Plan for governance of association during first six years after issuance of Federal charter.* (1)(i) An applicant for a Federal mutual savings bank charter

may submit a plan which provides that each member of its governing board, *i.e.*, board of trustees, managers, or directors, may continue to serve, provided that within two years of the issuance of a Federal charter at least one-fifth of the members of such board shall have been elected by vote, either in person or by proxy, of the bank's membership as provided in its Federal charter, that within three years of the issuance of its Federal charter at least two-fifths of the members of such board shall have been elected by such a membership vote, that within four years of the issuance of its Federal charter at least three-fifths of the members of such board shall have been elected by such a membership vote, that within five years of the issuance of its Federal charter at least four-fifths of the members of such board shall have been elected by such a membership vote, and that within six years of the issuance of its Federal charter all of the members of such board shall have been elected by such a membership vote.

(ii) The plan:

(A) Shall set forth the names of those persons who are being proposed for service on the applicant's governing board after conversion to a Federal charter,

(B) Shall show how trustees not elected by the converted bank's membership will be appointed or otherwise selected, and

(C) Shall provide that no trustees may be appointed or elected to terms of more than three years.

(iii) The plan may provide that

(A) After receipt of its Federal charter the bank will be organized by its existing governing board,

(B) Within the first two years following receipt of its Federal charter, the bank's charter may be amended without a membership vote, provided any such amendment is first approved by a two-thirds vote of its board of trustees and is thereafter approved by the OCC, and

(C) The bank's first annual membership meeting need not take place until two years after receipt of its Federal charter.

(2) Except to the extent that the OTS prior to July 21, 2011 or by the OCC ap-

proves a plan under this paragraph (c) which is inconsistent with other provisions of this section, a Federal mutual savings bank shall in all respects comply with those other provisions.

§ 143.12 Grandfathered authority.

(a) A Federal savings bank formerly chartered or designated as a mutual savings bank under state law may exercise any authority it was authorized to exercise as a mutual savings bank under state law at the time of its conversion from a state mutual savings bank to a Federal or other state charter. Except to the extent such authority may be exercised by Federal savings associations not enjoying grandfathered rights hereunder, such authority may be exercised only to the degree authorized under state law at the time of such conversion. Unless otherwise determined by the OTS prior to July 21, 2011 or by the OCC an association, in the exercise of grandfathered authority, may continue to follow applicable state laws and regulations in effect at the time of such conversion.

(b) A Federal savings association that acquires, or has acquired, a Federal savings bank by merger or consolidation may itself exercise any grandfathered rights enjoyed by the disappearing institution, whether such rights were obtained directly through conversion or through merger or consolidation. The extent of the grandfathered rights of a Federal savings association that disappeared prior to the effective date of this section shall be determined exclusively pursuant to this section.

(c) This section shall not be construed to prevent the exercise by a Federal savings association enjoying grandfathered rights hereunder of authority that is available under the applicable state law only upon the occurrence of specific preconditions, such as the attainment of a particular future date or specified level of regulatory capital, which have not occurred at the time of conversion from a state mutual savings bank, provided they occur thereafter.

(d) This section shall not be construed to permit the exercise of any particular authority on a more liberal basis than is allowable under the most